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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,088	01/18/2002	Graham John Hamilton Melrose	2354/141 (FF34527/02)	6479

7590 06/06/2007

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EXAMINER	
KUMAR, PREETI	

ART UNIT	PAPER NUMBER
1751	

MAIL DATE	DELIVERY MODE
06/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/053,088	**Applicant(s)** MELROSE ET AL.	
	Examiner Preeti Kumar	**Art Unit** 1751	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *17 May 2007*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

DOUGLAS MCGINTY
SUPERVISORY PATENT EXAMINER
1751

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments filed after final rejection are not found persuasive. Applicants urge that the amendment filed 8/30/2006 is identical to the original claim 1 as it existed on 5/31/2005 and thus the office action dated 11/17/2006 should not have been made final since it did not contain the same rejection that was contained in the office action dated 11/30/2004. This argument is not found persuasive since Applicants amended the claims after the nonfinal rejection dated 11/30/2004 to a polymeric antimicrobial composition which amendment was addressed in the final rejection 8/25/2005. The claims were then again amended to cancel claim 1 and make at least claim 10 independent and further amended which amendment was addressed in the nonfinal rejection dated 3/15/2006. Subsequent to this rejection, Applicants added claim 48 which reintroduces the claim 1 which was cancelled from before. Since claim 1 was cancelled and a new independent claim 10 was presented for consideration a new rejection was necessary to address the gastrointestinal administration of the polymeric composition. And again when claim 48 was presented a new rejection was necessary in light of applicant amendment and state of the claims at that particular time. It does not bode well for compact prosecution for Applicants to even expect a repeat rejection. In any case, Examiner is not required to repeat a rejection from years past just because Applicant are going in circles with their amendments. Finally regarding Applicants arguments against the prior art made of record: Applicants urge that there is a clear structural difference between the poly(2-propenal, 2-propenoic acid) formed by heating polyacrolein in air as disclosed in Melrose et al. and the claimed derivative formed by heating poly(2-propenal,2-propenoic acid) for a sufficient time and temperature in the presence of organic compounds having one or more hydroxyl groups. This is not found persuasive since none of the presented claims are directed to a process of heating for a sufficient time and temperature. And regardless if these limitations were presented, the prior art teaching of Melrose et al. illustrates a reaction of the subject polymers poly(2-propenal, 2-propenoic acid) with polyethylene glycol at room temperature upto 100 degrees C to increase hydrophilicity and utility in the application of treating diseases of the gastrointestinal tract of humans, animals and birds. See page 3,ln.25-35 and page 7,lines 5-15 and in examples 1,13 and 15. Furthermore, limitations to protected carbonyl groups and reduction in H1NMR signal are encompassed by the invention of Melrose et al. because Melrose et al. illustrate by example the use of similar materials (i.e. poly(2-propenal, 2-propenoic acid)) and in the similar production steps (i.e. reaction with polyethylene glycol) to produce an antimicrobial composition which have the claimed intended use in treating diseases of the gastrointestinal tract of humans, animals and birds. The same components in the same composition would result in the same property of H1NMR signal reduction and the carbonyl groups being protected. .